

NOT FOR PUBLICATION (For upload to www.vid.uscourts.gov)

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Crim. No. 1999-021
)	
RUSSELL ROBINSON,)	
)	
Defendant.)	
)	

MEMORANDUM

This matter is before the Court on defendant Russell Robinson's ["Robinson" or "defendant"] motion, filed *pro se*,¹ for a stay of incarceration pending appeal.

Following a jury trial in July of 1999, Robinson was found guilty of one count of alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(I). On November 9, 2000, the Court imposed judgment on Robinson, sentencing him to a term of eighteen months imprisonment and three years of supervised release following his release from incarceration, and ordering him to pay a \$100 assessment. Robinson remains free pending his voluntarily self-surrender to the Bureau of Prisons, currently scheduled for January 9, 2001. Due to the impending surrender date, the Court has ruled without the benefit of a response from the United

¹ Robinson is represented in this matter by counsel, Stephen Bruschi, Esq. Robinson claims as his reason for filing the motion *pro se* that Attorney Bruschi is off-island.

States.

Release pending appeal is governed by 18 U.S.C. § 3143(b):

(1) . . . the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in--

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

(Emphasis added); see also *United States v. Miller*, 753 F.2d 19, 24 (3d Cir. 1985) (applying factors). The Court agrees that Robinson is not likely to flee and that he pose no danger to the safety of others or the community if released. His conviction was for a nonviolent crime, and, despite being allowed to pilot planes off-island on several occasions since his indictment, he has never used any of these trips as an opportunity to flee. Robinson's motion, however, does not show that the appeal is not for the purpose of delay, nor does it raise a substantial question of law or fact likely to result in one of the four

outcomes enumerated at 18 U.S.C. § 3143(b)(1)(B).² The Court will therefore deny Robinson's motion. An appropriate order follows.

ENTERED this 5th day of January, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

² To satisfy this element, the defendant must generally show that the issue raised is "one which is either novel, which has not been decided by controlling precedent, or which is fairly doubtful." *Miller*, 753 F.2d at 23. This test has been further refined to require that the issue raised be "debatable among jurists" or is "adequate to deserve encouragement to proceed further." *United States v. Smith*, 793 F.2d 85, 89-90 (3d Cir. 1986) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

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Defendant.)	
_____)	

ORDER

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that defendant Russell Robinson's motion for stay of incarceration pending appeal is **DENIED**.

ENTERED this 5th day of January, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

Copies to:
Hon. Geoffrey W. Barnard
Nelson Jones, Esq. (AUSA)
Stephen A. Bruschi, Esq.
Russell Robinson
Mrs. Jackson

By: _____/s/_____
Deputy Clerk